

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS: 06-0085**  
**INDIANA INCOME TAX**  
**For 2002, 2003, and 2004**

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**ISSUE**

**I.     Proposed Assessments – Indiana Adjusted Gross Income Tax.**

**Authority:**     IC 6-8.1-5-1(a); IC 6-8.1-5-1(b)

Taxpayer challenges proposed income tax assessments for 2002, 2003, and 2004 on the ground that taxpayer "was not employed and therefore had no income" during those three years.

**STATEMENT OF FACTS**

Taxpayer failed to report and pay state adjusted gross income tax for 2002, 2003, and 2004. The Department of Revenue (Department) conducted an investigation to determine if taxpayer owed state income tax for those years.

The examiner sent taxpayer a certified letter and a follow-up letter advising taxpayer of the investigation. However, taxpayer failed to submit the missing tax returns or make available the relevant information.

Faced with the lack of more current information, the examiner reviewed the tax returns taxpayer submitted for 1999 through 2001. Based upon the information contained in those earlier returns, the examiner prepared estimated 2002 through 2004 returns. The examiner concluded that the amounts of income listed on these returns were based upon the "best information available." Thereafter, the Department forwarded taxpayer notices of "Proposed Assessment." Taxpayer disagreed on the ground that he had not received income during 2002, 2003, and 2004 and submitted a protest to that effect.

The protest was assigned to a hearing officer, an administrative hearing was scheduled during which taxpayer would have been provided an opportunity to further explain the basis for his protest. Taxpayer chose not to take part in the hearing. This Letter of Findings was prepared based upon the information contained within taxpayer's file.

**DISCUSSION**

**I.     Proposed Assessments – Indiana Adjusted Gross Income Tax.**

Taxpayer disagrees with the Department's notices of proposed assessment on the ground that he did not receive taxable income during 2002, 2003, and 2004. In support of that contention, taxpayer has offered three notarized affidavits each of which contains the statement that he "was not employed and therefore had no income for [2002, 2003, and 2004]."

IC 6-8.1-5-1(a) states in part that "If the department reasonably believes that a person has not reported the proper amount of tax due, the department shall make a proposed assessment of the amount of the unpaid tax on the basis of the best information available." The statute *requires* the Department to issue proposed assessments when the Department believes that the taxpayer has underpaid his or her state income tax.

Once the notices of proposed assessments are issued, it is up to the taxpayer to provide information demonstrating that the assessments are incorrect. "The notice of proposed assessment is *prima facie* evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." IC 6-8.1-5-1(b).

Based upon the information contained within taxpayer's earlier returns, the Department reasonably believed that taxpayer had underreported his 2002, 2003, and 2004 income because the earlier returns reported yearly adjusted gross income totaling approximately \$834,000. IC 6-8.1-5-1(a). Based upon the information contained within those earlier returns the Department was not only correct but was required to issue the notices based upon the best information available to it at the time the investigation report was prepared.

In rebuttal, taxpayer has submitted affidavits which – in effect – declare that taxpayer's 2002, 2003, and 2004 adjusted gross income fell to \$0. The Department is unable to conclude that, pursuant to, IC 6-8.1-5-1(b), taxpayer has met his burden of demonstrating that the proposed assessments are wrong. Stripped of the legalese, the affidavits are simply taxpayer's unsupported declarations that taxpayer became unemployed and received no income during 2002, 2003, and 2004. Taxpayer declined the opportunity to provide additional information and chose instead to believe that the affidavits were sufficient to rebut the proposed assessments. Taxpayer erred.

The Department's proposed assessments were based upon the best information available, taxpayer chose to rely solely upon three self-serving affidavits to rebut the assessments, taxpayer failed to meet his burden of demonstrating that the proposed assessments were wrong, and taxpayer's protest must be rejected.

### **FINDING**

Taxpayer's protest is denied.